

# EXHIBIT 2

1 UNITED STATES DISTRICT COURT SOUTHERN  
2 DISTRICT OF NEW YORK

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4 MARIA VECCHIO, individually, and on  
5 behalf of all others similarly situated,

6 Plaintiffs,

7 - against -

8 QUEST DIAGNOSTICS INC., EXAMONE WORLD  
9 WIDE, INC., and EXAMONE LLC,

10 Defendants.

11 -----x

12 January 15, 2020

13 10:10 a.m.

14 DEPOSITION of STEPHANIE L. PLANCICH, PhD,  
15 taken by the Defendants, pursuant to  
16 Notice, held at the offices of Baker  
17 McKenzie, LLP, 452 Fifth Avenue, New York,  
18 New York, before Debbie Zaromatidis, a  
19 Shorthand Reporter and Notary Public of  
20 the State of New York.

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| <p style="text-align: right;">Page 62</p> <p>1 sufficient?</p> <p>2 MR. BUSTAMANTE: Objection to</p> <p>3 form.</p> <p>4 A. I think it gives a reasonable</p> <p>5 estimate of preappointment work, post</p> <p>6 appointment work, and travel time. Based</p> <p>7 on my review of the testimony, the</p> <p>8 consistency of the testimony, and the fact</p> <p>9 that we are averaging across a dozen</p> <p>10 people gives a reasonable estimate of</p> <p>11 these times.</p> <p>12 So I do think it is a reasonable</p> <p>13 and reliable estimate. As I note in my</p> <p>14 report, if provided with additional</p> <p>15 information we certainly could look at</p> <p>16 that and add that into our analysis. It</p> <p>17 doesn't affect the formula at all.</p> <p>18 Q. It effects the formula in terms</p> <p>19 of the time estimates, correct?</p> <p>20 A. The formula is the methodology.</p> <p>21 The methodology is you review deposition</p> <p>22 testimony because I understand there were</p> <p>23 no other reliable records kept of the time</p> <p>24 spent preappointment, post appointment,</p> | <p style="text-align: right;">Page 64</p> <p>1 relying on matter?</p> <p>2 A. You can calculate an average</p> <p>3 based on the sample that I have right now,</p> <p>4 and I have done so, and given the scope of</p> <p>5 the sample it looks reliable. Certainly</p> <p>6 you could add observations to the sample</p> <p>7 and see if it had any impact on your</p> <p>8 calculations. That is still, like I said,</p> <p>9 a fundamental -- it is the same</p> <p>10 methodology that I am doing now. It just</p> <p>11 increases --</p> <p>12 Q. Could you have relied on one</p> <p>13 deposition?</p> <p>14 A. If that were all that were</p> <p>15 available, it would still demonstrate that</p> <p>16 the methodology is feasible. Right. So</p> <p>17 I used all the data that I had been</p> <p>18 provided to me at the time of the report</p> <p>19 to come up with a formulaic way to</p> <p>20 estimate the hours that people worked,</p> <p>21 taking their allegations in the complaint</p> <p>22 as given.</p> <p>23 So the formula could still be</p> <p>24 illustrated with one deposition. I would</p>   |
| <p style="text-align: right;">Page 63</p> <p>1 and traveling. So we have to use the</p> <p>2 deposition testimony to come up with those</p> <p>3 estimates, collect information from them</p> <p>4 an average across estimates. That is the</p> <p>5 methodology, the sample of depositions</p> <p>6 that we used, everything that we had to</p> <p>7 illustrate that the methodology was</p> <p>8 feasible, but you could do the same</p> <p>9 methodology with a different sample of</p> <p>10 depositions.</p> <p>11 Q. Does the size of the sample</p> <p>12 matter?</p> <p>13 MR. BUSTAMANTE: Objection to</p> <p>14 form.</p> <p>15 Q. I'm sorry.</p> <p>16 There are close to 3,000</p> <p>17 plaintiffs in this case, who have joined</p> <p>18 the case. Are you aware of that?</p> <p>19 A. I saw a list of 3,000 plaintiffs</p> <p>20 at one point approximately. Yes.</p> <p>21 Q. So to determine the average</p> <p>22 amount of time spent preappointment, post</p> <p>23 appointment, and traveling, does the size</p> <p>24 of the sample that you are referring to or</p>                                     | <p style="text-align: right;">Page 65</p> <p>1 certainly prefer to have 12, and if there</p> <p>2 are more we definitely would take a look</p> <p>3 at them and include them in the analysis.</p> <p>4 Q. If there were more than 50</p> <p>5 depositions, would you rather have all 50</p> <p>6 plus depositions than simply 12?</p> <p>7 A. I would always look at more data</p> <p>8 if it is available. I don't know until I</p> <p>9 look at the data if it would be necessary</p> <p>10 to do coding and data review exercises for</p> <p>11 all 50. It might be appropriate to do a</p> <p>12 sample from 50 to come up with a number</p> <p>13 that is sufficiently reliable for this</p> <p>14 purpose, but I could certainly look at all</p> <p>15 50 of those provided to me.</p> <p>16 Q. If there were close to 3,000</p> <p>17 plaintiffs in the case, how many</p> <p>18 depositions do you think you would need to</p> <p>19 review to have a sufficient sample size?</p> <p>20 MR. BUSTAMANTE: Objection to</p> <p>21 the extent it was asked and answered.</p> <p>22 You can answer.</p> <p>23 A. I think you can get an estimate</p> <p>24 with one. We have shown you there is an</p> |

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| <p style="text-align: right;">Page 126</p> <p>1 Q. And what did you find?</p> <p>2 A. I did not do any systematic exam</p> <p>3 comparison of any of those things because</p> <p>4 the description of services in the grid</p> <p>5 versus the testimony was not like a</p> <p>6 one-to-one mapping, so I just looked at</p> <p>7 the data.</p> <p>8 Q. And you've testified that you're</p> <p>9 confident in the methodology you have come</p> <p>10 up with to calculate damages, correct?</p> <p>11 A. Yes.</p> <p>12 Q. Looking at your supplemental</p> <p>13 declaration, are you confident in the</p> <p>14 estimates you're using for preappointment</p> <p>15 work, post appointment work, and travel</p> <p>16 time?</p> <p>17 A. I think that those are</p> <p>18 reasonable estimates based on the twelve</p> <p>19 depositions that I have received and</p> <p>20 coded.</p> <p>21 Q. If time permitted, would you</p> <p>22 look at anything else to come up with more</p> <p>23 accurate estimates for the preappointment,</p> <p>24 post appointment, and travel time?</p>   | <p style="text-align: right;">Page 128</p> <p>1 by the company of preappointment, post</p> <p>2 appointment, and travel time, I could look</p> <p>3 at those. I understand those don't</p> <p>4 exist.</p> <p>5 Q. Do you know that several</p> <p>6 examiners listed that they reported their</p> <p>7 preappointment, post appointment, and</p> <p>8 travel time through the phone system?</p> <p>9 A. I have seen testimony that some</p> <p>10 examiners used the phone system to record</p> <p>11 those times. I have also seen testimony</p> <p>12 from examiners saying that they recorded</p> <p>13 different times or they did not record on</p> <p>14 the phone system. My understanding is</p> <p>15 that that is not a systematic state of</p> <p>16 data for the whole class or collective I</p> <p>17 should say.</p> <p>18 Q. If time permitted, would it be</p> <p>19 your preference to review the 47</p> <p>20 additional plaintiffs' depositions that</p> <p>21 you were not provided to modify or confirm</p> <p>22 your estimates for the preappointment,</p> <p>23 post appointment, and travel time?</p> <p>24 MR. BUSTAMANTE: Objection to</p> |
| <p style="text-align: right;">Page 127</p> <p>1 A. At this time based on the data</p> <p>2 in my possession, I believe I have looked</p> <p>3 at everything that is relevant for those</p> <p>4 estimates. Again, if additional data</p> <p>5 were produced to me, I would want to look</p> <p>6 at it, and then depending on what it</p> <p>7 looked like I could determine if there was</p> <p>8 something else I wanted to do or not.</p> <p>9 Q. In a perfect world, what else</p> <p>10 would you look at to come up with more</p> <p>11 accurate estimates for preappointment,</p> <p>12 post appointment, and travel time?</p> <p>13 MR. BUSTAMANTE: Objection to</p> <p>14 form.</p> <p>15 A. I don't know that -- I don't</p> <p>16 know that the estimates that I have now</p> <p>17 are not accurate. They seem quite</p> <p>18 reasonable to me. We have a sample of</p> <p>19 testimony of 12 people, and we averaged</p> <p>20 all across all of them to come up with a</p> <p>21 robust preappointment, post appointment,</p> <p>22 and travel time. If there were additional</p> <p>23 depositions, I could look at that. If</p> <p>24 there were electronic records maintained</p> | <p style="text-align: right;">Page 129</p> <p>1 form.</p> <p>2 A. If I were provided additional</p> <p>3 depositions, I would certainly take a look</p> <p>4 at them without seeing them. I don't</p> <p>5 know to what extent I would do additional</p> <p>6 analysis or modify any numbers or</p> <p>7 anything. I would have to see them first</p> <p>8 to know the answer to that, but I would</p> <p>9 look at them. Yes.</p> <p>10 Q. Is it possible those 47</p> <p>11 depositions if you reviewed and coded them</p> <p>12 as you have done with the other 12 would</p> <p>13 impact the assumptions you've used in your</p> <p>14 methodology?</p> <p>15 A. I would say they wouldn't impact</p> <p>16 the methodology or the assumptions used to</p> <p>17 structure the methodology, but the</p> <p>18 averages, the average time numbers could</p> <p>19 be different.</p> <p>20 Q. Do you agree that they could be</p> <p>21 significantly different based on the</p> <p>22 limited number of depositions you</p> <p>23 reviewed?</p> <p>24 A. I have no opinion on that. I</p>   |

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| <p style="text-align: right;">Page 134</p> <p>1 testified to versus the estimates you have<br/>2 in Exhibit C?<br/>3 A. Again, we looked at the<br/>4 deposition testimony describing the<br/>5 services, so I reviewed some of that data,<br/>6 and I certainly reviewed Exhibit C, but we<br/>7 were not able to do a one-to-one like<br/>8 match up with the testimony at the time<br/>9 because of the very specific descriptions<br/>10 of the services that were in the payment<br/>11 grid relative to how people described<br/>12 their activities in the deposition<br/>13 testimony.<br/>14 Q. Did you review any of the<br/>15 service estimates in Exhibit C just to get<br/>16 a gut check or get a feel it was accurate?<br/>17 A. Again, I looked at the<br/>18 depositions and reviewed this, but I<br/>19 didn't do anything systematic because<br/>20 there was no way to line them up one to<br/>21 one.<br/>22 Q. For example, you have blood<br/>23 pressure 0.93. Do you see that?<br/>24 A. Yes.</p> | <p style="text-align: right;">Page 136</p> <p>1 illustration.<br/>2 Q. You keep referring to the<br/>3 methodology, but to determine if someone<br/>4 has a minimum wage overtime violation the<br/>5 four estimates that go into the<br/>6 methodology are critical, correct?<br/>7 A. They add up to the number of<br/>8 time hours spent per day, yes.<br/>9 Q. And those assumptions or<br/>10 estimates are going to impact whether<br/>11 there is a minimum wage violation and<br/>12 whether there is an overtime violation,<br/>13 correct?<br/>14 A. Yes.<br/>15 Q. And so the estimates are<br/>16 critical for any damages analysis,<br/>17 correct?<br/>18 A. They are a critical inputs to<br/>19 the calculation. The numbers themselves<br/>20 can change, and it doesn't affect the<br/>21 methodology because when we got better<br/>22 data as I did for the supplemental report<br/>23 we changed the inputs, but the methodology<br/>24 is exactly the same.</p> |
| <p style="text-align: right;">Page 135</p> <p>1 Q. What would 0.93 be in minutes<br/>2 approximately?<br/>3 A. It's -- I don't know. 50 some<br/>4 minutes.<br/>5 Q. Have you ever had your blood<br/>6 pressure taken before?<br/>7 A. I have.<br/>8 Q. Has it ever taken 50 something<br/>9 minutes?<br/>10 A. It has taken quite a while, but<br/>11 as to the description of services this is<br/>12 all we had. It says blood pressure, but<br/>13 given the limited amount of information we<br/>14 have I don't know if blood pressure<br/>15 involves other activities. We didn't<br/>16 have the detail without the service grids,<br/>17 which we have now. So again that was a<br/>18 difficulty in reconciling what exactly<br/>19 these services entailed.<br/>20 Q. You didn't reference any of<br/>21 those difficulties in your original<br/>22 declaration though, correct?<br/>23 A. It doesn't affect the<br/>24 methodology. This is just an</p>  | <p style="text-align: right;">Page 137</p> <p>1 Q. But the methodology is useless<br/>2 if the inputs are wrong, correct?<br/>3 A. We used the data available to us<br/>4 at the time. So if there is better data,<br/>5 better inputs, we would use those.<br/>6 Q. Okay. Staying on Exhibit C --<br/>7 MR. ROONEY: Let's mark this as<br/>8 Exhibit 3.<br/>9 (Exhibit 3 marked for<br/>10 identification.)<br/>11 (Document handed to witness.)<br/>12 Q. You are being handed what is<br/>13 marked as Exhibit No. 3, which is the<br/>14 deposition of Maria Vecchio. Did you<br/>15 review the deposition of Maria Vecchio in<br/>16 connection with this case?<br/>17 A. I did, but it was quite a while<br/>18 ago.<br/>19 Q. Turn to page 78 of the<br/>20 deposition.<br/>21 A. Okay.<br/>22 Q. You can read that page to<br/>23 yourself and let me when you are done.<br/>24 (Pause.)</p>  |

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| <p style="text-align: right;">Page 138</p> <p>1 A. Okay.</p> <p>2 Q. Do you agree that Ms. Vecchio</p> <p>3 testified that blood draws took</p> <p>4 approximately 15 minutes?</p> <p>5 A. Yes, I guess full a blood draw.</p> <p>6 Q. And in your Exhibit C you have</p> <p>7 0.98 for a blood draw. Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. Did you ignore the deposition</p> <p>10 testimony of Ms. Vecchio when coming up</p> <p>11 with the 0.98 for estimated time for a</p> <p>12 blood draw?</p> <p>13 A. We did not systematically code</p> <p>14 service times from Ms. Vecchio's</p> <p>15 deposition or any other deposition because</p> <p>16 we weren't able to take the descriptions</p> <p>17 in their testimony and line them up with</p> <p>18 the service payment registers in a</p> <p>19 consistent way.</p> <p>20 Q. Do you agree that 15 minutes for</p> <p>21 a blood draw based on Ms. Vecchio's</p> <p>22 deposition testimony is quite different</p> <p>23 than 0.98 under your Exhibit C?</p> <p>24 MR. BUSTAMANTE: Objection to</p> | <p style="text-align: right;">Page 140</p> <p>1 testified it was 15 to 30 minutes,</p> <p>2 correct?</p> <p>3 A. Yes.</p> <p>4 Q. Look at page -- read page 75 and</p> <p>5 76 to yourself.</p> <p>6 (Pause.)</p> <p>7 Q. You could stop at the top of</p> <p>8 page 76.</p> <p>9 A. Okay.</p> <p>10 Q. Do you agree that Ms. Vecchio</p> <p>11 testified that it would take her</p> <p>12 approximately five to ten minutes to</p> <p>13 perform physical measurements?</p> <p>14 A. Yes.</p> <p>15 Q. And if you look at your physical</p> <p>16 measurement calculation, you have 0.88.</p> <p>17 Do you see that?</p> <p>18 A. Physical measure, yes, is .88.</p> <p>19 Q. Do you agree that .88 is</p> <p>20 significantly different than five to ten</p> <p>21 minutes?</p> <p>22 A. It is a different number, yes.</p> <p>23 Q. And that difference would</p> <p>24 significantly impact the calculations</p>   |
| <p style="text-align: right;">Page 139</p> <p>1 form.</p> <p>2 A. Those numbers are different.</p> <p>3 Q. So you agree they are</p> <p>4 significantly different?</p> <p>5 A. The numbers are different.</p> <p>6 Q. Turn to page 80 in Ms. Vecchio's</p> <p>7 deposition.</p> <p>8 A. Okay.</p> <p>9 Q. If you look at lines 8 through</p> <p>10 10, "Question: So the EKG could be</p> <p>11 anywhere from 15 minutes to 30 minutes?</p> <p>12 Answer. Yes."</p> <p>13 Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. So Ms. Vecchio testified that</p> <p>16 EKG's would take her fifteen to 30</p> <p>17 minutes, correct?</p> <p>18 A. Yes.</p> <p>19 Q. And if you look at your Exhibit</p> <p>20 C, you have 1.5 for EKG. Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. So under your estimate on your</p> <p>23 original declaration, you had an hour and</p> <p>24 a half for an EKG while Ms. Vecchio</p>  | <p style="text-align: right;">Page 141</p> <p>1 under your methodology, correct?</p> <p>2 A. Again, not the form of the</p> <p>3 calculation or the methodology. If the</p> <p>4 numbers change and flow through, it would</p> <p>5 affect the damages estimate.</p> <p>6 Q. Would you agree it would have a</p> <p>7 significant impact on the damages</p> <p>8 estimate?</p> <p>9 A. I don't know what the impact</p> <p>10 would be.</p> <p>11 Q. Do you agree with --</p> <p>12 A. You have to put it all together.</p> <p>13 Q. Do you agree that the estimates</p> <p>14 would be -- your calculations would be</p> <p>15 inflated if you used your estimates in</p> <p>16 Exhibit C versus the times that</p> <p>17 Ms. Vecchio has given in her deposition?</p> <p>18 A. So first</p> <p>19 Ms. Vecchio -- Ms. Vecchio is just one</p> <p>20 deponent. So other people may have</p> <p>21 different experiences about how long it</p> <p>22 takes to perform various services. I</p> <p>23 haven't looked at that right now. So I</p> <p>24 don't know that it would be inflated</p> |

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| <p style="text-align: right;">Page 142</p> <p>1 relative to other mobile examiners.<br/> 2 So that is one answer to your<br/> 3 question. I do agree that if you use a<br/> 4 higher number estimate relative to a lower<br/> 5 number it will tend to increase the<br/> 6 estimated time we calculate that she was<br/> 7 working.<br/> 8 Q. So if Ms. Vecchio, for example,<br/> 9 testified that EKG's took her 15 to 30<br/> 10 minutes, but under your estimate of 17.5<br/> 11 hours your methodology would result in<br/> 12 inflating her potential damages?<br/> 13 A. If we use a higher time estimate<br/> 14 to perform a service than she testifies<br/> 15 to, that would assume that she spends more<br/> 16 time, yes. It may have an impact on<br/> 17 damages. It just depends on the rest of<br/> 18 the calculation.<br/> 19 Q. When you prepared Exhibit C to<br/> 20 your original declaration, did you factor<br/> 21 in in any way the testimony from the 12<br/> 22 plaintiffs you reviewed?<br/> 23 A. As I have said already, we<br/> 24 reviewed the testimony of the plaintiffs.</p> | <p style="text-align: right;">Page 144</p> <p>1 they were incomplete, yes, that these<br/> 2 estimates were wrong because we did not<br/> 3 have the full file that generates the<br/> 4 payment grid, which breaks down these<br/> 5 numbers into subcomponents. Once we had<br/> 6 that, we updated our analysis to reflect<br/> 7 that to use the best available data, and<br/> 8 that is reflected in the supplemental<br/> 9 report. So Exhibit C is not really part<br/> 10 of my opinion any more.<br/> 11 Q. After you reviewed the<br/> 12 deposition testimony, did you observe that<br/> 13 the different plaintiffs gave different<br/> 14 time estimates for services they<br/> 15 performed?<br/> 16 A. I did not track that<br/> 17 systematically, so I can't answer that for<br/> 18 you right now. I don't recall that level<br/> 19 of detail.<br/> 20 Q. Isn't the service time estimate<br/> 21 critical to any damages calculations?<br/> 22 A. It is a component of the<br/> 23 methodology to estimate time worked. Yes.<br/> 24 Q. Why did you not review the</p> |
| <p style="text-align: right;">Page 143</p> <p>1 We saw them describe services, but there<br/> 2 was not a way in our opinion to<br/> 3 systematically capture time estimates for<br/> 4 all the services included on this report.<br/> 5 Excuse me. Included on Exhibit C, which<br/> 6 comes from the payment grid or to even be<br/> 7 sure if there is three different things<br/> 8 that say blood, which blood item they were<br/> 9 describing. So we certainly reviewed the<br/> 10 depositions, but we didn't rely on them<br/> 11 for service time estimates in the initial<br/> 12 report.<br/> 13 Q. When you say Ms. Vecchio<br/> 14 testifying that EKGs take 15 to 30<br/> 15 minutes, does that cause you to question<br/> 16 the 1.5 hour estimate that you had in<br/> 17 Exhibit C?<br/> 18 A. The 1.5 hours was the best<br/> 19 estimate that we had at the time and<br/> 20 illustrative -- sufficiently illustrative<br/> 21 of our methodology.<br/> 22 Q. Would you agree that those<br/> 23 estimates were wrong?<br/> 24 A. Our understanding now is that</p>                           | <p style="text-align: right;">Page 145</p> <p>1 deposition testimony and come up with time<br/> 2 estimates based on the depositions for the<br/> 3 service times?<br/> 4 A. I feel like I have answered this<br/> 5 already. We looked at the deposition<br/> 6 testimony and found that the description<br/> 7 of service times was not sufficient to map<br/> 8 to the service payment schedules or to the<br/> 9 service registers. There were services<br/> 10 that people got paid for in the service<br/> 11 registers that we didn't see an example of<br/> 12 in the deposition testimony where people<br/> 13 said things like blood draw, and we didn't<br/> 14 know which service that would map to.<br/> 15 So with the payment schedule, we<br/> 16 had a complete list of all of the<br/> 17 services, and we used that to illustrate<br/> 18 how this kind of methodology would work.<br/> 19 Would you mind if I got more hot<br/> 20 water?<br/> 21 MR. ROONEY: We can go off the<br/> 22 record.<br/> 23 (Luncheon recess: 12:50 p.m.)<br/> 24</p>                      |

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| <p style="text-align: right;">Page 166</p> <p>1 received additional compensation that is<br/> 2 reflected in their service register data,<br/> 3 that would feed right into my formula. So<br/> 4 if people are getting flat payments or<br/> 5 something that represents minimum wage<br/> 6 true-ups, those dollar values would be<br/> 7 incorporated in our analysis on an<br/> 8 individualized basis by person or week.<br/> 9 So by default that would be<br/> 10 included if they show up on the payment<br/> 11 service registers. If there is additional<br/> 12 data that reflects other kinds of payments<br/> 13 made to people and we were to receive that<br/> 14 data, we would add it into the formula,<br/> 15 and the methodology would be the same.<br/> 16 Q. But if there are minimum wage<br/> 17 true-ups that are on individual's paycheck<br/> 18 and not on the service register, would<br/> 19 that impact your analysis?<br/> 20 A. If there is additional<br/> 21 compensation data in some other source<br/> 22 that we haven't received, that would<br/> 23 potentially affect the minimum wage<br/> 24 analysis, but if we got data we could plug</p> | <p style="text-align: right;">Page 168</p> <p>1 Q. Was there anything in Dr.<br/> 2 Krock's declaration that you disagreed<br/> 3 with?<br/> 4 A. Dr. Krock made critiques of my<br/> 5 analysis that I did not agree with. He<br/> 6 also I mean at the time referenced data in<br/> 7 documents that I hadn't received. So when<br/> 8 I read his declaration, I wasn't really<br/> 9 able to form an opinion about those at the<br/> 10 time.<br/> 11 Q. What critiques did you disagree<br/> 12 with?<br/> 13 A. I haven't reviewed his<br/> 14 declaration in a while. So if you would<br/> 15 like me to take some time and look at it,<br/> 16 I can do that, but I didn't -- I don't<br/> 17 remember everything off the top of my<br/> 18 head.<br/> 19 MR. ROONEY: Let's go off the<br/> 20 record.<br/> 21 (Discussion held off the<br/> 22 record.)<br/> 23 MR. ROONEY: Back on the<br/> 24 record.</p>   |
| <p style="text-align: right;">Page 167</p> <p>1 it into our methodology and update it.<br/> 2 Q. Are you aware that Examone has<br/> 3 provided mobile examiners including many<br/> 4 plaintiffs overtime?<br/> 5 A. I am not aware. Again, based<br/> 6 on the complaint and the deposition<br/> 7 testimony we reviewed, we didn't see<br/> 8 evidence of overtime payments.<br/> 9 MR. BUSTAMANTE: Objection to<br/> 10 the extent it refers to evidence.<br/> 11 MR. ROONEY: Mark this Exhibit<br/> 12 5.<br/> 13 (Exhibit 5 marked for<br/> 14 identification.)<br/> 15 (Document handed to witness.)<br/> 16 Q. You have been handed what has<br/> 17 been marked as Deposition Exhibit No. 5.<br/> 18 Do you recognize this document?<br/> 19 A. I know that I have seen Dr.<br/> 20 Krock's declaration before, so I assume<br/> 21 that this is the same version I have seen.<br/> 22 Let me check the date just to make sure.<br/> 23 Yes, this one seems like the date that I<br/> 24 recall.</p>  | <p style="text-align: right;">Page 169</p> <p>1 Q. Have you had a chance to look at<br/> 2 Dr. Krock's rebuttal declaration?<br/> 3 A. Yes. I reviewed his summary of<br/> 4 conclusions on pages 2, 3 and 4, and then<br/> 5 I also took a look at his overall<br/> 6 conclusion, which I think is very similar<br/> 7 to his summary of conclusions. That's on<br/> 8 pages 18 and 19.<br/> 9 Q. In terms of his summary --<br/> 10 A. Excuse me. 17, 18, and 19.<br/> 11 Q. In terms of his summary of<br/> 12 conclusions, do you disagree with any of<br/> 13 his conclusions?<br/> 14 A. Yes.<br/> 15 Q. Which ones?<br/> 16 A. So his points 1, 3, 4, all refer<br/> 17 to the services payment grid that we<br/> 18 didn't have at the time of my original<br/> 19 report. So to the extent that I have that<br/> 20 document now, and it is something that I<br/> 21 am relying on for my supplemental<br/> 22 declaration, I think these points are<br/> 23 irrelevant. They no longer apply to the<br/> 24 analysis that I am putting forward.</p> |

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| <p style="text-align: right;">Page 206</p> <p>1 A. And if I am not allowed to have<br/>2 the other deposition, then I would say<br/>3 this is all I have been provided, and it<br/>4 is the best estimate given the data that I<br/>5 have. So this is what the methodology is.<br/>6 It would work the same if you gave me 50<br/>7 depositions, and I developed a sample of<br/>8 those and coded them or if I had 12. It<br/>9 is the same methodology, but if you are<br/>10 only giving me one that is all I know that<br/>11 exists, then I would use that because that<br/>12 is the best estimate that I have to do the<br/>13 analysis because there is no -- to my<br/>14 understanding there is no other<br/>15 recordkeeping for these preappointment<br/>16 time, post appointment time, and travel<br/>17 time work according to plaintiffs'<br/>18 allegations.<br/>19 Q. Has plaintiff's counsel ever<br/>20 told you that there were more than 12<br/>21 depositions of the plaintiffs in this<br/>22 case?<br/>23 MR. BUSTAMANTE: Objection.<br/>24 Asked and answered.</p> | <p style="text-align: right;">Page 208</p> <p>1 A. I asked them for all additional<br/>2 materials relevant to my analysis, that<br/>3 they produce those to me. I didn't get<br/>4 any additional deposition transcripts as<br/>5 part of that.<br/>6 Q. Would you have preferred to<br/>7 receive more than 12 deposition<br/>8 transcripts assuming that there had been<br/>9 more than 50 taken?<br/>10 MR. BUSTAMANTE: Objection.<br/>11 Asked and answered.<br/>12 A. If there is additional data<br/>13 available, I would certainly take a look<br/>14 at it.<br/>15 Q. Do you know how plaintiffs'<br/>16 counsel selected the 12 depositions that<br/>17 they provided to you?<br/>18 MR. BUSTAMANTE: Objection.<br/>19 Asked and answered.<br/>20 A. No.<br/>21 MR. BUSTAMANTE: Also beyond the<br/>22 scope of the witness.<br/>23 MR. ROONEY: I am done with the<br/>24 deposition. I will leave the</p> |
| <p style="text-align: right;">Page 207</p> <p>1 A. I don't recall the specific<br/>2 conversation. I'm sorry.<br/>3 Q. As you sit here today, do you<br/>4 know if there had been more than 12<br/>5 depositions of the plaintiffs in this<br/>6 case?<br/>7 A. I haven't seen more than 12<br/>8 depositions, so the only deposition<br/>9 transcripts I have seen and can verify<br/>10 exist are the 12. There may be more. I<br/>11 understand there may be some additional<br/>12 ones that have been taken. I haven't<br/>13 seen those. I don't have any evidence<br/>14 that they exist except you are saying it.<br/>15 Q. In your communications with<br/>16 plaintiffs' counsel, why didn't you<br/>17 specifically ask them are there any more<br/>18 deposition transcripts? Dr. Krock is<br/>19 referring to 50 depositions here. Are<br/>20 there any more depositions?<br/>21 MR. BUSTAMANTE: Objection.<br/>22 Asked and answered. That is the<br/>23 fourth time that question has been<br/>24 asked.</p>   | <p style="text-align: right;">Page 209</p> <p>1 deposition open. To the extent you<br/>2 have the time estimates from the<br/>3 original declaration, ideally you<br/>4 could provide a short declaration with<br/>5 those time estimates for the<br/>6 preappointment, post appointment, and<br/>7 travel time that were used in the<br/>8 original declaration that we discussed<br/>9 today then there will be no need for<br/>10 further deposition testimony.<br/>11 Otherwise, no additional questions.<br/>12 MR. BUSTAMANTE: Can we meet<br/>13 for a couple of minutes.<br/>14 MR. ROONEY: We can leave the<br/>15 room.<br/>16 (Recess taken.)<br/>17 (Continued on next page.)<br/>18<br/>19<br/>20<br/>21<br/>22<br/>23<br/>24</p>  |

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

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THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

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